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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 RAJENDRA MEHTA,

13 Plaintiff,

14 vs.

15 OUT OF THE BOX ENTERPRISES,
16 LLC, a Texas Limited Liability
17 Company,

18 Defendant.

Case No.: 5:16-cv-107

**COMPLAINT TO SET ASIDE AND
VACATE JUDGMENT FOR
EXTRINSIC FRAUD OR MISTAKE**

1 Plaintiff Rajendra (“Raju”) Mehta avers:

2 1. The Court has jurisdiction over this action because it seeks in
3 equity to vacate and set aside the October 30, 2012 Final Judgment in *Out of the*
4 *Box Enterprises, LLC v. El Paseo Jewelry Exchange, Inc., et al.*, USDC C.D.
5 Cal. 5:10-cv-01858-VAP-DTB (the “OOTB Action”), a judgment rendered by
6 this Court under the Lanham Act. Further, this Court has power to declare the
7 Final Judgment void and unenforceable under 28 U.S.C. § 2201.

8 2. Venue is proper in this District, in that the Final Judgment in the
9 OOTB Action was rendered by this Court in this District.

10 3. Plaintiff Rajendra Mehta is an individual residing in Los Angeles
11 County, California.

12 4. Defendant Out of the Box Enterprises, LLC (“OOTB”) is a Texas
13 Limited Liability Company which maintained its principal offices and
14 operations in Riverside County, California.

15 5. OOTB filed its Complaint initiating the OOTB Action on
16 December 2, 2010. The Complaint was against El Paseo Jewelry Exchange,
17 Inc., El Paseo Jewelry, Inc., Rajendra Mehta and Ivan Kalensky. The
18 Complaint averred that OOTB and the El Paseo companies were competitors in
19 the gold buying business, in the Palm Desert area. The Complaint further
20 averred that Mehta and Kalensky worked for the El Paseo companies. The
21 Complaint was for false advertising under the Lanham Act and related
22 California law false advertising theories. The gist of the Complaint was that the
23 defendants falsely advertised that they were purchasing gold for 92% of its
24 value, when in fact they paid significantly less. The Complaint averred that the
25 false advertising drew customers away from OOTB and to the defendants, to
26 OOTB’s loss.

1 6. In the gold buying business, the business purchases gold objects
2 from customers, including jewelry, bullion and coins, and sells the gold to
3 smelting companies for a higher price, thus earning a profit.

4 7. The OOTB Action was tried in phases, to a jury and to the bench,
5 commencing on July 11, 2012 and concluding on July 26, 2012.

6 8. OOTB had the burden of proving causation and damages in order
7 to prevail at the trial.

8 9. OOTB attempted to meet this burden by presenting to the Court
9 and jury evidence in the form of summary profit and loss reports generated by
10 OOTB's accounting software, information prepared by OOTB or its
11 bookkeepers, Tr. Ex. 98.

12 10. Trial Exhibit 98 showed that OOTB first earned receipts in
13 September 2009. The exhibit reflected summary financial information through
14 August 2011.

15 11. The Court permitted testimony concerning lost sales during the
16 "false advertising period," from January 16, 2010, when the first 92% ad
17 appeared, to September 15, 2010, the last 92% ad.

18 12. OOTB's expert opined that during the false advertising period the
19 price of gold rose, from which he theorized that gold purchases by OOTB from
20 gold sellers should have increased. He took summary figures for gold
21 purchases from Ex. 98, a subset of costs of goods sold. He graphed those
22 summary figures by month, and observed that these figures were less than the
23 summary gold purchase figures reflected for October, November and December
24 2009. OOTB's expert then opined that the difference between expected gold
25 purchases based upon the price of gold and actual gold purchases as reflected in
26 Tr. Ex. 98 were entirely attributable to the 92% advertisements. He testified
27 that, based upon the difference between the summary gold purchase figures in
28 Tr. Ex. 98 and the gold purchases supposedly expected based upon gold prices,

1 OOTB lost profits from the reduced level of gold purchases in a sum in excess
2 of \$2 million.

3 13. OOTB's entire proof of causation and damages was thus
4 dependent on the summary gold purchase figures disclosed by OOTB to the
5 Court and jury in Tr. Ex. 98.

6 14. On information and belief, these gold purchase figures were known
7 to be mistaken by OOTB, and constituted a fraud on the Court and jury.

8 15. On information and belief, the figures OOTB presented to the
9 Court and jury was based upon gold purchases made by check. However
10 OOTB testified that it also purchased gold by cash. If cash purchases had been
11 added as a gold purchase cost in OOTB's books, one would have expected an
12 increase in the total stated gold purchase cost. However, on information and
13 belief, OOTB made massive unexplained journal entries to its books, entries
14 that OOTB did not disclose to the Court or jury, that had the effect of massively
15 decreasing the summary gold purchase figures during the periods in question.

16 16. On information and belief, OOTB did not reliably record cash gold
17 purchase transactions in its accounting software, such that the summary gold
18 purchase costs revealed to the Court and jury were mistaken and fraudulent.

19 17. On information and belief, the journal entries made in OOTB's
20 books, which were not presented or explained to the Court or jury, materially
21 altered the data that was presented to the jury, such that the information
22 presented to the jury was the product of mistake or fraud.

23 18. Based on the summary gold purchase information presented by
24 OOTB to the Court and jury in Tr. Ex. 98 and in its expert's testimony, the jury
25 returned a verdict that the false advertising caused damage to OOTB. Based on
26 the jury's verdict, this Court entered the Final Judgment.

First Claim for Relief

Set Aside and Vacate Judgment for Extrinsic Fraud and Mistake

19. For its First Claim for Relief, Plaintiff incorporates by reference the averments of ¶¶ 1-18 above.

20. The summary gold purchase figures in Tr. Ex. 98 solely underpinned OOTB's proof of causation and damages.

21. On information and belief, the information presented by OOTB to the Court and jury was mistaken and fraudulent, in that the summary information did not reliably or truly reflect gold purchases by OOTB.

22. For these reasons, the Final Judgment was procured by OOTB through mistake and fraud.

23. Plaintiff is entitled, in equity, to an order setting aside the Final Judgment on grounds of extrinsic mistake and fraud.

Prayer

Plaintiff prays for entry of an order setting aside and vacating the Final Judgment, for costs of suit, and for such other and further relief as the Court may deem just.

DATED: January 20, 2016

SPILLANE TRIAL GROUP PLC



By: _____

Jay M. Spillane
Attorneys for Plaintiff Rajendra Mehta